

MEMORANDUM
UNIVERSITY PARK COMMONS II, LLC OR ITS ASSIGNS
TIF FINANCIAL ASSISTANCE TERM SHEET

June 14, 2024

The purpose of this Term Sheet ("Term Sheet") is to outline the principal terms and conditions of a tax incremental financing (TIF) loan agreement ("Loan Agreement") to be executed by and between the City of Madison ("City") and University Park Commons II, LLC, or its assigns ("Developer"). The purpose of the loan is to assist in the construction of University Park Commons – Phase II, consisting of approximately 68 units of multi-family affordable housing ("Project") at the property located at 625 Sand Pearl Lane in Tax Incremental District (TID) #46, in the City of Madison ("Property").

The terms incorporated into the loan documents will be as follows:

1. The Project. Developer agrees to develop on the Property all of the following:
 - a. Construction of approximately 68 units of affordable housing, which Developer agrees to set aside 55 of the apartments units for occupancy at 60% or less of the area median income (AMI) as defined by Section 42 of the Internal Revenue Code and consistent with the income restrictions under the Wisconsin Housing and Economic Development Authority's Low-Income Housing Tax Credit Program, and subject to the Land Use Restriction described in Section 24 of this Term Sheet.
2. Form of Assistance. TIF assistance shall be provided in the form of a 0% interest loan in the amount of Three Hundred Forty-Four Thousand Dollars (\$344,000) to the Developer for the purposes of constructing the Project (the "TIF Loan"). The TIF Loan to be repaid either through increment, pursuant to Section 10, or a guaranty payment, pursuant to Section 12.
3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than \$20,831,000 for Project ("Financing").

Financing shall be evidenced in the form of (i) a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing such as commercial pre-leasing requirements, if any; (ii) a letter of intent from a tax credit investor; and/or (iii) a grant award letter from a nonprofit or governmental entity.

Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. The Developer's Equity investment may include equity from the sale of Low Income Tax Credits, a cash contribution from the tenant that will occupy the Project, the Developer's contribution of land, and a deferred developer's fee. In aggregate, Developer's equity investment, as established through financing documents shall not be less than the amount of the TIF Loan at closing.

After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the total project costs as stated in the TIF Application. The total project costs estimated therein at approximately \$21,175,000. Upon stabilization of the Project (defined as three months of occupancy at 90% physical occupancy), Developer shall provide the City with a cost certification prepared by its accountant (SVA Certified Public Accountants) of the total Project Cost and Financing ("Audit"), to the City's reasonable satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and records related to Project Cost and Financing. In the event that the financing gap for Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual

Cost”) and/or an increase, as established by the Audit, in Financing (“Audited Actual Financing”), the following formula shall apply to determine the clawback payment due to the City (“Clawback”):

The Clawback shall be calculated as follows:

1. “Cost Savings” Project = \$21,175,000, minus the Audited Actual Cost; and
2. “Financing Increase” = Audited Actual Financing minus \$20,831,000.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback.

Developer’s payment of the Clawback shall be applied as a payment to the tax increment guaranty under Sections 10 and 12 below and shall reduce the outstanding amount of the TIF Loan pursuant to Sections 10 and 12 below.

4. Tax Credit Approval. TIF assistance to the Project is contingent upon Developer receiving an award of Section 42 low-income housing tax credits (“LIHTC”) from Wisconsin Housing and Economic Development Authority (“WHEDA”) by July 1, 2025. The parties agree and acknowledge that the Project received an award of LIHTC from WHEDA as of the date hereof.
5. Disbursement Method. At closing, the City shall disburse the TIF Loan to a title company to be held in escrow. In order to facilitate the City’s review of project cost to confirm eligibility under Wisconsin TIF Law (Wis. Stats. 66.1105) and Developer’s progress toward SBE bidding goals as set forth in Section 14 herein, the City and Developer shall enter into a Disbursement Agreement that authorizes no less than three (3) disbursements of TIF funds, including a final 20% of total TIF funds retained until 80% project completion confirmation by the Department of Civil Rights (“DCR”) that Developer has complied with the applicable provisions of MGO 39.02 (9). TIF funds shall be disbursed upon the City’s receipt and satisfactory review of a detailed draw request from Developer provided on or about no less than three (3) disbursement dates, to a title company. Developer shall have the right to lend a portion of the TIF Loan to the project in phases, secured by one or more notes and mortgages as approved by the City Attorney. The TIF Loan is contemplated to be subordinate to senior financing provided by First Business Bank; but will be senior to a loan provided by Dane Workforce Housing Fund II and a loan provided by County of Dane.
6. Operating Agreement and Pro Forma. At least seven days prior to closing, Developer shall provide to the City: (a) a copy of the Amended and Restated Operating Agreement between the Managing Member, Investor Member, and Special Member(s), if any, of the entity that shall own, manage and control the Property, with the final copy to be delivered at Closing and before the City makes its first disbursement of the TIF Loan proceeds; and (b) the final 30-year operating pro forma.
7. 2024 Capital Budget Amendment. Funding for the Three Hundred Forty-Four Thousand Dollars (\$344,000) TIF Loan is contingent upon authorization of a budget amendment to the City of Madison 2024 Capital Budget authorizing the expenditure of funds stated herein.
8. TID 46 Project Plan Amendment. The City shall not make TIF funds available until the date of an approval of a TID #46 Project Plan Amendment by the TIF Joint Review Board during the first quarter of 2025, authorizing the TIF Loan expenditure.
9. No TID Project Plan Certification. In the event that the TID #46 Project Plan and Boundary is not certified by DOR on or about December 31, 2025, Developer understands and acknowledges that the City shall not fund any portion of the TIF Loan to Developer.

In the event of the TID #46's non-certification, the City shall make its best effort to secure TID certification by DOR no later than on or about December 31, 2026.

10. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Project shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").

For the Project described herein, Developer shall perform on all requirements of the respective TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to the Clawback provision (Section 3), and the Tax Increment Guaranty (Sections 10 and 12). In such event, the City shall credit Developer for the City's portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Sections 10 and 12, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, at its ten-year maturity in 2035.

11. Sale to Tax Exempt Entity – PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2051. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the closure of TID #46. This obligation will be secured by a land use restriction terminable upon closure of TID #46.
12. Security and Personal Guaranty. The TIF Loan shall be evidenced by a note executed by Developer, or its assigns, to the City of Madison in the amount of Three Hundred Forty-Four Thousand Dollars (\$344,000) bearing zero percent (0%) interest (together the "Note"). Developer shall execute a second lien mortgage in favor of the City of Madison in the amount of Three Hundred Forty-Four Thousand Dollars (\$344,000) on the Property (the "Mortgage"). The City agrees, if necessary, to execute a subordination of mortgages in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s) and said subordinated mortgage shall be in the second mortgage position. Developer and its assigns shall cause to be provided a personal guaranty of Jacob T. Klein of the TIF Loan to the Project, which is contemplated to be released upon stabilization.
13. Satisfaction. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan.
14. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract. The Developer

understands that it is obligated to meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

- a. The general contractor provide a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
- b. A meeting shall take place before loan closing to set affirmative action goals for the project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request.
- c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, "Completion" shall mean expenditure of total project costs as described in the TIF Application.

15. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
16. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
17. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
18. Material Changes. At the time of Closing, if any material adverse changes to the size, use or ownership of the Project or Property stated in the TIF Application, including any changes to the number or rent of the affordable units, have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).
19. Project Completion. Developer shall use its best efforts to cause the construction of the Project to be completed by December 31, 2025. Project completion shall be evidenced by the issuance of a certificate of occupancy. Failure to complete the Project by said date will require payment under the increment guaranty in Sections 10 and 12.
20. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
21. Title Insurance. Within thirty (30) days of the date of the Loan Agreement, Developer shall provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender's policy in a form to be approved by the City Attorney, which will require, among other things, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.

22. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff. Developer providing said environmental assessment does not modify the Developer's indemnification obligations described in Section 22.

23. Indemnification.

- a. Developer shall be liable to and hereby agrees to indemnify, save harmless and defend the City, its officers, officials, agents and employees against all loss or expense (including liability costs and reasonable attorney's fees) arising from any and all claims, demands, liabilities and causes of action of whatever kind or nature related to the Property, to the extent occasioned in whole or in part by any act or omission of Developer or its officers, members agents, contractors, subcontractors, invitees or employees, which may now or hereafter be made against them, whether caused by or contributed to by the negligent acts of the City, its agents or employees.
- b. Developer shall enter into an environmental indemnification agreement with the City, which will include the following:
 - i. Representations and warranties from Developer regarding Developer's knowledge of the presence of pollutants on the property, history of pollutants on the property, and any existing or possible legal proceedings or actions related to pollutants on the Property.
 - ii. Agreement by Developer to indemnify and save the City harmless from all causes of action, suits, claims, demand, judgments and liabilities arising from pollutants on the Property, failure to perform abatement, removal, etc., or other liabilities otherwise arising from environmental laws with respect to the Property.
 - iii. Agreement by Developer to timely comply with all applicable environmental laws.
- c. The indemnification provisions described in this Section 23 will survive termination of the Loan Agreement and shall be in addition to any other rights and remedies of the City.

24. Period of Affordability. This Project will have a 30-year affordability period evidenced by a Land Use Restriction Agreement recorded in the first position, behind only a Land Use Restriction for Low-Income Housing Tax Credits with WHEDA, and if a permanent first mortgage lender is providing financing, then after such lender's permanent first mortgage and related security documents. The Land Use Restriction Agreement will remain in effect even if the Promissory Notes are satisfied before the end of the Period of Affordability.

25. Automatic Expiration. The TIF Loan shall be null and void in the event that Developer does not: (1) commence construction on the Project, as evidenced by issuance of permits for footings and foundations, by October 31, 2025; or (2) close on the TIF Loan by December 31, 2026.

If the terms and conditions outlined above are acceptable to University Park Commons II, LLC, or its assigns please so indicate by signing in the space provided below. While it is the intent of the City to provide the TIF financial assistance in a timely manner, no binding agreement will exist between the City and University Park Commons II, LLC, or its assigns, unless and until the terms and conditions are approved by the City's Common Council and is executed between the Mayor, City Clerk and Developer or its assigns.

ACCEPTANCE

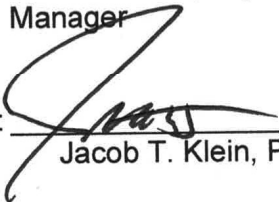
The terms and conditions as set forth in this term sheet are acceptable to University Park Commons II, LLC, or its assigns. I further certify that I have the full authority to accept these terms and conditions on behalf of University Park Commons II, LLC, or its assigns.

University Park Commons II, LLC,
a Wisconsin Limited Liability Company

By: University Park Commons MM II, LLC
Its: Managing Member

By: JTK 5, LLC
Its: Manager

By: JT Klein Company, Inc.
Its: Manager

By: 

Jacob T. Klein, President

Date: June 27, 2024